

*Entered 6th Feb 1867
under order of the Court
by Reg. of Genl.*
In Chancery,

Between

SAMUEL G. McCAUGHEY,

Plaintiff,

—AND—

**SUSAN DOWN, EDWARD DOWN, WILLIAM DOWN,
MARY DOWN, SUSAN MARRAN and WILLIAM
MARRAN, and GRACE DOWN, an Infant within the age
of twenty-one years, *and Harriet A. Down***

Defendants.

Town of Goderich.

To the Honorable the Judges of the Court of Chancery:

**THE BILL OF COMPLAINT of SAMUEL G. Mc-
CAUGHEY, of the Village of Seaforth, in the County of
Huron, Gentleman.**

Sheweth:

1. That under and by virtue of a certain Indenture of bargain and sale by way of Mortgage, bearing date the 6th day of April, 1864, and duly registered, and made between one Henry Down, since deceased, of the First Part; the Defendant, Susan Down, who joined therein for the purpose of barring her dower of the Second Part, and one Thomas Hawkins of the Third Part, and an assignment thereof bearing date the 28th day of June, 1869, and made between the said Thomas Hawkins of the First Part, and your complainant of the Second Part; your complainant is Mortgagee of certain lands and premises therein particularly described as all that certain parcel or tract of land and premises situate, lying and being in the Township of Stephen, in the County of Huron, and Province of Ontario, containing by admeasurement 100 acres, be the same more or less, and being composed of Lot Number 8, in the 2nd Concession of the said Township of Stephen, for securing the repayment of the sum of \$300, and interest thereon at the rate of ten per centum per annum.

2. That the time for the payment of the principal money secured by the said Indenture of Mortgage has elapsed, and no payment has been made on account thereof.

3. That there is now due for principal money the sum of \$300, and interest thereon at the rate aforesaid from the 6th day of April 1869.

4. The said Thomas Hawkins has not, nor hath your complainant, been in possession or occupation of the mortgaged premises, or any part thereof, or in receipt of the rents and profits thereof, or of any part thereof.

5. That on or about the 14th day of February, 1866, the said Henry Down departed this life, leaving Susan Down his widow, and Edward Down, William Down, George Down, Mary Down, Grace Down, Susan Down, and Frances Down, his only children and heirs-at-law him surviving; and having first made and published his last Will and Testament, bearing date the 8th day of February, 1866, in the words following, namely:—

"I Henry Down, of the Township of Stephen, County of Huron and Province of Canada, Yeoman, being of ill health but of sound and disposing mind and memory, do make and publish this my last Will and Testament, hereby revoking all former Wills by me at any time heretofore made. First—I hereby constitute and appoint my wife to be Executrix jointly with my son Edward, as Executor of this my last Will, directing them to pay all my just debts and funeral expenses, and the legacies hereinafter given: First—I give and bequeath unto my wife the annual sum of sixty dollars. Second—I give and bequeath unto each of my daughters, viz: Mary, Susan, Frances and Grace, the sum of one hundred and twenty dollars when they become of age, and that they shall be clothed and maintained until they are of age. Third—that I devise and will unto my son William, the homestead Lot known as Lot Eight, in the Second Concession of said Township of Stephen, County of Huron, and Province of Canada, and that all the debts be paid by said William, and also all the legacies; said lot I Will to said son William, his heirs and assigns, for his and their use and benefit—subject only to the payment of my just debts, Funeral and Testamentary expenses, and the charges of proving my Will."

"Fourth—I will and devise unto my son Edward, the Farm Lot known as Lot Seven, in the Third Concession of the Township of Stephen, County of Huron, and Province of Canada, subject to the sum of One Thousand Dollars, which is to be paid to my son George,



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"when he shall arrive of age; but in the event of his death before he comes of age, then the said thousand dollars to be equally divided among the family then living. Said Lot Seven in Third Concession of Stephen, I as above, will and devise unto my son Edward, his heirs and assigns, forever subject as above."

6. That the said Susan Down and Edward Down duly proved the said Will, and took upon themselves the burthen of the execution thereof.

7. That Frances Down, one of the children of the said Henry Down, departed this life a short time since, under the age of twenty-one years.

8. That Susan Down, another of the children of the said Henry Down, some time in month of December, 1868, intermarried with and she is now the wife of the Defendant, William Marran,

9. That Grace Down, one of the Defendants above named, is an infant under the age of twenty-one years, being of the age of fifteen years or thereabouts.

10. The Defendants hereto, or some or one of them, are or is entitled to the equity of redemption of the said mortgaged premises.

It is the Defendant William Down's own money and he has paid it and is entitled to the equity of redemption of the mortgaged premises to which he is entitled as owner of the same. He is not a trustee of the said premises.

Your complainant therefore prays that he may be paid the said sum of \$300 and interest, and the costs of this suit; and in default thereof that the equity of redemption of the said Defendants in the said Mortgaged premises may be foreclosed. And for the purposes aforesaid, that all proper directions may be given and accounts taken. And that your Complainant may have such further and other relief in the premises, as the nature and circumstances of the case may require and to your Lordships may seem meet.

And your Complainant shall ever pray, &c.,

F. HOLMESTED.

F. Holmsted.